

**UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT**

VERMONT FEDERATION OF SPORTSMEN'S  
CLUBS, *et al.*

*Plaintiffs,*

v.

MATTHEW BIRMINGHAM, *et al.*,

*Defendants.*

Case No. 2:23-cv-710

**Consented-to Motion for a Stay**

NOW COME Plaintiffs, with the consent of Defendants, and move that this Court stay this action pending appeal of its order denying Plaintiffs' Motion for a Preliminary Injunction. ECF74. In support of this Motion, Plaintiffs state as follows:

1. "The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706-07; *see also Air Line Pilots Ass'n v. Miller*, 523 U.S. 866, 879 n.6 ("The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.").
2. This Court's denial of the preliminary injunction is appealable as of right pursuant to 28 U.S.C. § 1292 (a). Plaintiffs are seeking appellate review.
3. The cases involving Second Amendment rights are in a state of rapid development at the present time, such that appellate guidance as to the

contours of the Second Amendment and of the analysis that this Court must conduct is likely to be both fruitful and forthcoming in short order.

Specifically, two cases cited extensively by this Court in its opinion denying a preliminary injunction are currently pending before the Second Circuit:

- a. As this Court noted at ECF74 at 68, fn. 27, the Second Circuit's recent opinion in *Antonyuk v. Chiumento*, 89 F.4th 271, 312 (2d Cir. 2023) was recently vacated and it is expected that the Second Circuit will shortly order supplemental briefing and reargument.
  - b. *Nat'l Ass'n for Gun Rts. v. Lamont*, 685 F. Supp. 3d 63, 84-91 (D. Conn. 2023) was appealed to the Second Circuit and is currently set for oral argument on October 16, 2024.
4. Other cases in different circuits are similarly in a state of rapid development nationwide. *Duncan v. Bonta*, Case No. 23-55805 (9<sup>th</sup> Cir.), is currently fully briefed at the Ninth Circuit, but no opinion has been issued. This Court cited the District Court's opinion in *Bonta* three times. Similarly, *Oregon Firearms Fed'n, Inc. v. Brown*, 644 F. Supp. 3d 782, 799 (D. Or. 2022) was appealed but is currently stayed at the Ninth Circuit pending an opinion in *Bonta*. This Court cited *Brown* and a related Oregon opinion entitled *Oregon Firearms Fed'n v. Koteck*, 682 F. Supp. 3d 874, 912 (D. Or. 2023) (also appealed, also stayed pending *Bonta*), a combined total of seven times.
  5. Appellate review of this Court's order will govern the evidence to be admitted in this case and how it is to be analyzed. If proceedings continue, it is expected that the evidence of both parties will be extraordinarily similar to what the

Court has already heard, such that there is little benefit (and much effort and expense) from duplicating evidence on summary judgment or at trial. In addition, in light of the rapidly evolving legal landscape, Plaintiffs respectfully submit that a stay would ensure the efficient use of the resources of both the parties and the Court going forward. In sum, there is little utility in continuing discovery in this case, or preparing for summary judgment or trial, while appellate guidance that could change the applicable analysis or the proof that either side is required to adduce remains forthcoming.

6. A stay would not prejudice the Defendants, because they have consented to this motion and because Plaintiffs were denied every form of relief they sought at ECF2 in this Court's order. The Defendants cannot suffer if their victory on that motion is extended pending appellate review.

WHEREFORE, Plaintiffs respectfully request that this Court stay these proceedings, pending resolution of Plaintiffs' appeal.

Respectfully submitted,

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